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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1171

NOLLA, GALIB & CO., *Petitioner,*

v.

GERONIMO LEBRON, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes	3
Statement	3
Reasons for Granting Writ	4
Conclusion	10
Prayer	11

Appendix A: Pertinent provisions of applicable laws	1a
Appendix B: Resolution of the Superior Court of Puerto Rico	3a
Opinion of the Supreme Court of Puerto Rico	7a
Appendix C: Decision of the Supreme Court of Puerto Rico, dated October 23, 1963, *Capital Construction Corp.* v. *Secretary of the Treasury*	10a

CITATIONS

CASES:

Arthur Goettel, et al. v. Glenn Berry Mfrs. Inc., 236 F. Supp. 884	10
Board of Equalization, etc, v. General Dynamus Corp., 344 S.W. 2d 489, Texas (1961)	6
Booth v. Montgomery Ward Co., D.C. Neb., 44 F. Supp. 451 (1942)	9
Brown Shoe Co. v. U.S., 370 U.S. 294	2
Capitol Construction Corp. v. Secretary of the Treasury, 89 PRR (decision of the Supreme Court of Puerto Rico dated October 28, 1963, not yet reported)	5, 6

	Page
Chaflin v. Houseman, 93 U.S. 130, 23 L. Ed. 833	7
Crouse v. North American Aviation of Kansas, D.C. Mo., 68 F. Supp. 934 (1946)	8
Delgado v. The Executive Council of Porto Rico, 7 PRR 401 (1904)	9
Floyd v. Dubois Soap Co., Ohio App., 38 N.E. 2d 919, reversed 41 N.E. 2d 919, reversed 317 U.S. 598, 63 S. Ct. 159	8
Gearheart v. Haskell, 87 PRR 53 (1963), not yet published	7
Hardin County Bd. of Super. v. Kentucky Limousines, 293 S.W. 2d 239 (Ky. 1956)	6
Humble Pipeline Co. v. Waggoner, 376 U.S. 370, 84 S. Ct. 857 (1964)	6
James Stewart Co. v. Sadrakula, 309 U.S. 94, 60 S. Ct. 432 (1940)	6
López v. District Court, 58 PRR 117 (1941)	6
Missouri ex rel. St. Louis B & M R. Co. v. Taylor, 266 U.S. 200, 45 S. Ct. 619	7
Murray v. Joe Gerrick & Co., 291 U.S. 315, 54 S. Ct. 432 (1934)	6, 7
Pacific Coast Dairies v. Department of Agriculture, 318 U.S. 285, 63 S. Ct. 628	6
Paul v. United States, 371 U.S. 245, 83 S. Ct. 426 (1963)	6
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945)	2
Second Employer's Liability Cases, 233 U.S. 1, 32 S. Ct. 169	7
Standard Oil Co. v. People of the State of California, 291 U.S. 242, 54 S. Ct. 381	6
Stewart v. Hickman, D.C. Mo. 36 F. Supp. 861 (1941)	8
Stringer v. Griffin Grocery Co., Tex. Civ. App., 149 S.W. 2d 158 (1941)	8
Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S. Ct. 455 (1930)	5
United States v. Cornell, 25 Fed. Cas. 646 (No. 14,867) (1819)	5, 6
United States v. Unzeuta, 281 U.S. 138, 50 S. Ct. 284 (1930)	6
Utley v. State Industrial Commission, 176 Okla. 257, 55 P. 2d 764	6

Page

STATUTES:

Constitution of the United States, Clause 17, Section 8, Article I 3, 5

Judiciary Act, 28 U.S.C. Section 1258 ..... 2, 3

Fair Labor Standards Act, 29 U.S.C. Sections 216, 216(b) 2, 3, 4, 6, 9, 10

Public Law of February 16, 1903, of the Legislature of Puerto Rico, Section 5, Laws p. 112 (28 LPRA Section 41) 3, 4

Act of June 25, 1936, 40 U.S.C. Section 290 7

Act Concerning Actions on Account of Death or Personal Injury Within Places Under the Exclusive Jurisdiction of the United States, 45 Stat. 54 (1928), 16 U.S.C. Section 457 7

Jones Act, 46 U.S.C. Section 688 10

Federal Employers Liability Act, 45 U.S.C. Section 56 10

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Puerto Rico, entered in the above entitled case on June 14, 1966. A motion for reconsideration was denied on December 23, 1966, and an amended resolution was entered on January 9, 1967.

OPINIONS BELOW

The resolution of the Superior Court of the Commonwealth of Puerto Rico (R. 25) has not been reported, and is printed in Appendix B hereto, *infra,* p. 3a. The opinion of the Supreme Court of Puerto Rico (R. 30) has been unofficially reported by the Bar Association of Puerto Rico, reference number 1963-187. It is printed in Appendix B hereto, *infra,* p. 7a.

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on June 14, 1966. A motion for reconsideration was denied on December 23, 1966. (R. 45) Said resolution denying reconsideration was amended on January 9, 1967. (R. 46) The jurisdiction of this court is invoked under 28 U.S.C. Section 1258,[1] on the following grounds:

1. The question of the applicability of state regulations over federal territory involves a substantial federal question.

2. The decision in question is in conflict with a plurality of decisions of this Court on the subject, and also with decisions of various state courts.

3. The Supreme Court of Puerto Rico has misconstrued an act of Congress (29 U.S.C. 216).

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[1] In the present case, even if the trial court should continue with the litigation, no federal question will arise. *Radio Station WOW, Inc.* v. *Johnson,* 326 U.S. 120 (1945). This Court has adopted a pragmatic approach to the question of what is a final judgment being essential to the achievement of the just, speedy and inexpensive determination of every action. *Brown Shoe Co.* v. *U.S.,* 370 U.S. 294.

QUESTIONS PRESENTED

1) Are the laws of the Commonwealth of Puerto Rico applicable to construction work performed in a naval installation over which the United States has exclusive jurisdiction?

2) Constitutes Section 16 of the Fair Labor Standards Act (29 U.S.C. 216) a retrogression by Congress of its exclusive jurisdiction over certain federal enclaves so as to allow the courts of the Commonwealth of Puerto Rico to take cognizance of a wage claim for work performed within such an area, and to apply local legislation to such work?

STATUTES

The pertinent provisions of the applicable laws are printed in Appendix A, at pages 1a-2a, *infra:* Clause 17, Section 8, Article I of the Constitution of the United States; Public Law of February 16, 1903, of the Legislature of Puerto Rico, Laws, P. 112, (28 L.P.R.A. Section 41.) Fair Labor Standards Act of 1938; (29 U.S.C. Section 216(b)); The Judiciary Act (28 U.S.C. Section 1258).

STATEMENT

This case concerns a wage claim instituted in the Superior Court of Puerto Rico, Humacao Section, for work performed within Roosevelt Roads, a naval installation located in Ceiba, Puerto Rico.

The Complaints, filed in June and July, 1963, allege that the plaintiffs below are entitled to back pay, according to the prevailing legislation, for work performed from January 1958 to January 1961.

After several interlocutory incidents, and prior to a trial on the merits, petitioner moved for a dismissal of the action on the grounds that the Superior Court of Puerto Rico did not have jurisdiction since all the work on which the claim was based was performed in an area within the exclusive jurisdiction of the United States. The motion was denied by the Superior Court. On certiorari to the Supreme Court of Puerto Rico, said court in case 64-55 upheld on the following grounds:

a) Section 16 of the Fair Labor Standards Act 1938, as amended, 29 U.S.C. 216, authorizes all courts of competent jurisdiction, whether State or Federal, to entertain actions such as this.

b) The claimants, as workers and employees performing work in a naval base of the United States of America, under a contract with a federal contractor, are covered in the first place by the Fair Labor Standards Act of 1938, of the Congress of the United States of America, and also by all local laws which are more beneficial than the provisions of the Fair Labor Standards Act of 1938 of the Congress of the United States of America.

Petitioner's motion for reconsideration was denied on December 23, 1966. On January 9, 1967, the Supreme Court of Puerto Rico entered an amended resolution specifying the names of the justices who had subscribed the resolution denying petitioner's motion for reconsideration.

REASONS FOR GRANTING THE WRIT

Roosevelt Roads was acquired through purchase by the United States of America, pursuant to a law of the Legislature of Puerto Rico, dated February 16,

1903, (Laws of Puerto Rico, page 112).[2] It falls within the exclusive jurisdiction of the United States of America, *Capitol Construction Corporation* v. *Secretary of the Treasury,* 89 PRR .....[3]

It is a well settled principle of law that when the United States acquires exclusive jurisdiction over land purchased for military purposes, the jurisdiction of the state ceases ipso facto and is thus completely ousted. United States Constitution, Article I, Section 8, Clause 17; *United States* v. *Cornell,* 25 Fed. Cas. 646 (No. 14,867) (1819); *Surplus Trading Co.* v. *Cook,* 281 U.S. 647, 50 S. Ct. 455 (1930).

In construing clause 17, Section 8, Article I of the Constitution, Justice Story, the writer of the Court's opinion in *Cornell* stated in his commentaries:

> "The other part of the power, giving exclusive legislation over places ceded for the erection of forts, magazines, etc., seems still more necessary for the public convenience and safety. The public money expended on such places, and the public property deposited in them, and the nature of the military duties that may be required there, all demand that they should be exempted from state authority. In truth, it would be wholly improper, that places in which the security of the entire na-

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[2] Section 5 of said law states that "consent is hereby given to the United States to acquire for naval, military or other public purposes, by purchase, lease or condemnation any lands within the Island of Puerto Rico, and when so acquired and possession thereof shall have been taken, *all jurisdiction over such lands by the people of Puerto Rico shall ipso facto cease and terminate . . .*" [Emphasis ours.]

[3] Decision of the Supreme Court of the Commonwealth of Puerto Rico dated October 28, 1963, not yet reported. Certified copy of said decision is hereby attached, as Appendix C.

> tion may depend, should be subject to the control of any member of it. The power indeed, is wholly unexceptionable; since it can only be exercsied at the will of the state; and therefore it is placed beyond all reasonable scruple." *2 Story, Constitution* Sec. 1224 (1847).

The holding in *Cornell* amounts to a declaration that with respect to areas within the exclusive jurisdiction of the United States, the state's jurisdiction is preempted by the federal government. This doctrine has been consistently followed by the federal courts. *Humble Pipeline Co.* v. *Waggonner,* 376 U.S. 370, 84 S. Ct. 857 (1964); *Pacific Coast Dairies* v. *Department of Agriculture,* 318 U.S. 285, 63 S. Ct. 628; *Standard Oil Co.* v. *People of the State of California,* 291 U.S. 242, 54 S. Ct. 381; *Murray* v. *Joe Gerrick & Co.,* 291 U.S. 315, 54 S. Ct. 432 (1934); *United States* v. *Unzeuta,* 281 U.S. 138, 50 S. Ct. 284 (1930); *James Stewart Co.* v. *Sadrakula,* 309 U.S. 94, 60 S. Ct. 432 (1940); *Paul* v. *United States,* 371 U.S. 245, 83 S. Ct. 426 (1963).

The doctrine has also been followed by State Courts in *Utley* v. *State Industrial Commission,* 176 Okla. 257, 55 P. 2d 764; *Hardin County Bd. of Super.* v. *Kentucky Limousines,* 293 S.W. 2d 239 (Ky., 1956); *Board of Equalization, etc.* v. *General Dynamics Corp.,* 344 S.W. 2d. 489 (Texas, 1961); and by the Commonwealth of Puerto Rico in *Capitol Construction Corp.* v. *Secretary of the Treasury,* supra; and *López* v. *District Court,* 58 P.R.R. 117 (1941).

The decision of the Supreme Court of Puerto Rico imports that Section 216 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) constitutes a cession or

retrogression of jurisdiction by Congress, which would permit the states to take cognizance of any wage claim arising out of construction work performed within an area under the exclusive jurisdiction of the United States. We submit that such interpretation is erroneous.

When Congress has wished to allow the states to exercise jurisdiction within a federal enclave it has specifically so stated through the enactment of special legislation.[4] Thus, in 45 Stat. 54 (1928) Congress acted to allow the applicability of state laws in actions for death or personal injury which occur within a national park or other place subject to the exclusive jurisdiction of the United States.[5] It should be noted that this statute, dealing with retrogression of jurisdiction by Congress in personal injury actions, has been restrictively construed. So, it has been held not to extend to actions arising under a State Workman's Compensation Law.[6]

On the other hand, rights created by Federal statute are enforceable in a state court *whenever its* ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion and is invoked in conformity with these laws. *Second Employer's Liability Cases,* 233 U.S. 1, 32 S. Ct. 169; *Chaflin* v. *Houseman,* 93 U.S. 130, 23 L. Ed. 833; *Missouri ex Rel. St. Louis B&M R. Co.* v.

[4] 40 U.S.C. 290 authorizes the application of State's Workman's Compensation Laws to buildings and property of the United States. The Buck Act, 4 U.S.C. 104, allows the states to levy certain taxes within a federal enclave.

[5] The Supreme Court of Puerto Rico applied this statute in *Gearheart* v. *Haskell,* 87 PRR 53 (1963), not yet published.

[6] *Murray* v. *Joe Gerrick & Co.,* 291 U.S. 315, 54 S. Ct. 432, supra.

Taylor, 266 U.S. 200, 45 S. Ct. 619. Such was the intention of Congress in enacting Section 16 of the Fair Labor Standards Act.

In its pertinent provisions, Section 16 states:

> "Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

The statute purports only that the action may be maintained in any court of competent jurisdiction having original jurisdiction of the parties and the subject matter, regardless of the amount in controversy and regardless of the question of diversity of citizenship. *Crouse* v. *North American Aviation of Kansas,* D.C. Mo., 68 F. Supp. 934 (1946).

Competent jurisdiction signifies a court of general jurisdiction, whether federal, state, or territorial, *Stewart* v. *Hickman,* D.C. Mo., 36 F. Supp. 861 (1941). The term indicates the intention of Congress that all courts, federal or state, shall have concurrent jurisdiction to hear controversies arising under the Fair Labor Standards Act, thereby leaving the complaining employees to determine the forum in which they wish to litigate their claim. *Stringer* v. *Griffin Grocery Co.,* Tex. Civ. App., 149 S.W. 2d 158 (1941); *Floyd* v. *Dubois Soap Co.,* Ohio App., 38 N.E. 2d 919, reversed 41 N.E. 2d 919, reversed 317 U.S. 598, 63 S. Ct. 159.

It permits a plaintiff to litigate his claim in a federal, state or territorial court having otherwise jurisdiction of the parties and over the subject matter, and being thus competent, by virtue of the law of their

creation, to entertain the action, *Booth* v. *Montgomery Ward Co.*, D.C. Neb., 44 F. Supp. 451 (1942). Competent jurisdiction entails jurisdiction over the parties and the subject matter and state courts may not, under the guise of Section 16 of the act, give extra-territorial effect to the laws of the state where the court sits.

The same concept of territorial jurisdiction is followed by the Supreme Court of Puerto Rico in *Delgado* v. *The Executive Council of Porto Rico,* 7 P.R.R. 401 (1904). In interpreting an act of the Legislature of Puerto Rico regulating the writ of mandamus, the Court stated at page 403:

> "Were it not for the words 'within its jurisdiction' probably this question would not have arisen. It would seem from a careful study of the language of this section that these words were intended to limit the persons, companies, corporations or inferior courts upon whom the writ of mandamus issued by the Supreme Court, or by any one of the district courts, should operate; and had it not been that the district courts, as well as the Supreme Court, were mentioned in the prior part of the section the words 'within its jurisdiction' would not have been necessary, as the jurisdiction of the Supreme Court is coextensive with the Island, *and extends to every place where the statutes of Porto Rico have their force.* In other words, *the territorial jurisdiction of the Supreme Court of Porto Rico is the same as the territorial jurisdiction of the Legislature,* although the district courts are limited to their respective districts." (emphasis added)

All the decisions issued under Section 16 have dealt with work performed within the territorial jurisdiction of the particular state or territory in which the court

sits. Most of them involve the right to remove to the federal courts of a cause of action arising within the state, on the grounds that actions under the Fair Labor Standards Act involve a federal question. Such was the case in *Arthur Goettel, et al.* v. *Glenn Berry's Mfrs., Inc.*, 236 F. Supp. 884, relied upon by the Supreme Court of Puerto Rico in its decision.

It is obvious that Section 16 of the Fair Labor Standards Act goes no further than the Jones Act, (46 U.S.C. 688), or the Federal Employer's Liability Act, (45 U.S.C. 56), in conceding concurrent jurisdiction to the state courts to entertain actions thereunder. Hence the interpretation given to it by the Supreme Court of Puerto Rico that it constitutes a cession or retrogression by the United States of its exclusive territorial jurisdiction is contrary to the intention of Congress and finds no support in any decisions construing such statute.

CONCLUSION

The Supreme Court of Puerto Rico has erred in holding that the laws of the Commonwealth of Puerto Rico are applicable to construction work performed in a naval installation over which the United States has exclusive jurisdiction, and that Section 16 of the Fair Labor Standards Act (29 U.S.C. 216) constitutes a retrogression by Congress of its exclusive jurisdiction over certain federal enclaves. Such decision is contrary to the overwhelming weight of authority in the subject.

PRAYER

Wherefore it is respectfully prayed that the writ of certiorari herein requested be issued and that the judgment of the Supreme Court of the Commonwealth of Puerto Rico in case number 64-55, be reversed.

Respectfully submitted,

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